



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

CCO/143234

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 18, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration in regard to Child Care, a hearing was held on October 23, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Daryl Caper

Milwaukee Early Care Administration  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On July 26, 2012, the agency issued a Child Care Overpayment Notice to the Petitioner informing her that the agency is seeking to recover \$3,500.65 for the period of March 18, 2012 – April 30,

2012. Attached to the Notice is a worksheet for the period of September, 2011 – December, 2011. The worksheet shows the agency calculated an overpayment of \$1,717.36 for the period of September, 2011 – December, 2011 but the worksheet and notice indicate an overpayment of \$3,500.65 is sought.

3. On August 18, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

Generally speaking, to successfully establish an overpayment claim, the agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

In this case, the agency has not met its burden of producing evidence to demonstrate that it properly seeks to recover on overissuance of child care benefits of \$3,500.65 from the Petitioner. The Child Care Overpayment Notice issued to the Petitioner on July 26, 2012 and presented as evidence at the hearing shows an overpayment period of March 18, 2012 – April 30, 2012. The overpayment worksheet attached to the notice and presented as evidence shows an overpayment period of September – December, 2011 and an overissuance amount of \$1,717.36. Based on the evidence presented, I cannot determine the overpayment period for which the agency seeks to recover an overissuance nor can I conclude the amount of the overpayment is accurate. In addition, the agency did not provide proper notice to the Petitioner regarding the overpayment period and the amount of the overpayment.

### **CONCLUSIONS OF LAW**

The agency did not provide proper notice to the Petitioner regarding its determination of an overissuance of child care benefits. The agency has not produced sufficient evidence to conclude that it properly seeks to recover an overissuance of child care benefits from the Petitioner.

**THEREFORE, it is**

### **ORDERED**

That this matter be remanded to the agency and the agency take the necessary administrative steps to rescind the Child Care Overpayment Notice dated July 26, 2012 issued to the Petitioner and cease to undertake any action to collect an overissuance of child care benefits from the Petitioner based on the July 26, 2012 Notice. These actions shall be taken within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

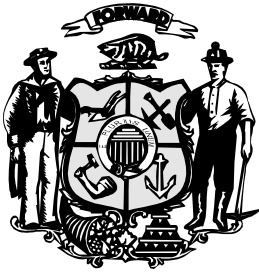
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of December, 2012

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 10, 2012.

Milwaukee Early Care Administration  
Public Assistance Collection Unit  
Child Care Fraud